

REMARKS

This Response is submitted in reply to the non-final Office Action dated October 24, 2007. A request for 3-month extension and associated fee is submitted herewith. The Director is authorized to charge any other fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-697 on the account statement.

Claims 1-6 are pending in this application. In the Office Action, the specification is objected to, Claims 1-4 are rejected under 35 U.S.C. §101, Claims 1-6 are rejected under 35 U.S.C. §112, Claims 1-6 are rejected under 35 U.S.C. §102 and Claim 3 is rejected under 35 U.S.C. §103. In response, Applicants amend Claims 1 and 3-5 and cancel Claim 2. The amendments do not add new matter and are supported in the specification at page 3, lines 14-15, page 4, lines 15-22 and page 5, lines 6-10. In view of the amendments and for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, the specification is objected to. Specifically, the Office Action asserts that no section headings appear in the specification and that the abstract is in error. In response, Applicants amend the specification to add section headings and rectify informalities in the abstract. Accordingly, Applicants respectfully request that the specification objection be withdrawn.

In the Office Action, Claims 1-4 are rejected under 35 U.S.C. §101. Specifically, the Office Action asserts that the rejected claims are indefinite for merely reciting a use without any active, positive steps delimiting how this use is actually practiced. In response, Applicants amend Claim 1 to recite a method for treating and/or improving insulin resistance, the method comprising administering to a patient having reduced insulin sensitivity a nutritional and/or pharmaceutical product comprising a composition comprising an acetogenic fiber, wherein the acetogenic fibre is lactulose, carrot pectin, soybean fibre, soy fibre or a mixture thereof. As amended, Claim 1 sets forth steps involved in the method for treating and/or improving insulin resistance. Moreover, Applicants cancel Claim 2 and amend Claims 3 and 4 to depend from the method of Claim 1.

Accordingly, Applicants respectfully request that the rejection of Claims 1-4 under 35 U.S.C. §101 be withdrawn.

In the Office Action, Claims 1-6 are rejected under 35 U.S.C. §112, first paragraph. Specifically, the Office Action asserts that the specification does not reasonably provide enablement for preventing insulin resistance or for preparing a composition capable of performing this intended use. In response, Applicants remove “preventing” from independent Claims 1 and 5.

Accordingly, Applicants respectfully request that the rejection of Claims 1-6 under 35 U.S.C. §112, first paragraph, be withdrawn.

In the Office Action, Claims 1-5 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,972,399 to Lapre et al. (“*Lapre*”). Moreover, Claims 1, 2 and 4-6 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,462,029 to Eliaz (“*Eliaz*”). Independent Claims 1 and 5 recite, in part, a method for treating and/or improving insulin resistance comprising administering to a patient having reduced insulin sensitivity a nutritional and/or pharmaceutical product comprising a composition comprising an acetogenic fiber. Applicants respectfully submit that *Lapre* and *Eliaz* fail to disclose or suggest every element of the present claims.

Lapre and *Eliaz* both fail to disclose or suggest a method for treating and/or improving insulin resistance comprising administering to a patient having reduced insulin sensitivity a nutritional and/or pharmaceutical product comprising a composition comprising an acetogenic fiber as required, in part, by Claims 1-6. Instead, *Lapre* teaches a food that comprises a core and a coating that substantially reduces the core’s glycemic response. See, *Lapre*, column 6, lines 43-45. *Lapre* never teaches or suggests that its coating can treat and/or improve insulin resistance. Rather, *Lapre* teaches that the components of the coating can also have a therapeutic effect for individuals suffering from diabetes, hypoglycemia, or glycogen storage disease. See, *Lapre*, column 7, lines 3-5. The coating accomplishes this by preventing an initial surge in blood glucose level after consumption of the core carbohydrate product and promoting, instead, a slower glucose release rate over an extended time. See, *Lapre*, column 7, lines 5-9. Therefore, besides not even being directed to a method for treating and/or improving insulin resistance, the coating in *Lapre* affects only the properties of the core it covers rather than affecting insulin resistance in the entire body.

Similar to *Lapre*, *Eliaz* fails to disclose or suggest a method for treating and/or improving insulin resistance. Instead, *Eliaz* teaches treating high circulating amounts of detrimental agents

such as heavy metals and environmental toxins. *Eliaz* also teaches treating high circulating amounts of indigenous agents such as calcium and other minerals that contribute deposits such as calcinosis as well as cholesterol in order to prevent and/or treat atherosclerosis. See, *Eliaz*, column 3, lines 3-14.

Though the Office Action asserts that column 2, lines 52-57 of *Eliaz* addresses insulin resistance, that portion of *Eliaz* only discloses prior art teachings that sodium alginate can treat/prevent obesity, hypercholesterolemia and diabetes. Moreover, *Eliaz* subsequently states that the prior art fails to teach the advantages of *Eliaz* stated above with regard to treating high circulating amounts of detrimental agents such as heavy metals and environmental toxins, and treating high circulating amounts of indigenous agents such as calcium and other minerals. See, *Eliaz*, column 2, line 58 to column 3, line 2. Therefore, not only is *Eliaz* directed to a completely different invention and associated advantages, it distinguishes its objectives from the prior art's treatment of diabetes, which is a different medical condition from insulin resistance anyway.

It appears that the Examiner is attempting to equate diabetes with insulin resistance in making the above rejections. However, insulin resistance is a medical condition independent of diabetes. Applicants' specification repeatedly states the distinction between the two conditions. See, specification, page 1, lines 4-10; page 3, line 8; page 4, lines 19-22; page 5, lines 24-27 and page 9, lines 15-18. Even those having skill in the art commonly accept the distinction between insulin resistance and diabetes. See, http://www.medicinenet.com/insulin_resistance/article.htm. Moreover, it is commonly accepted that the two medical conditions can occur many years apart from each other. See, http://www.medicinenet.com/insulin_resistance/page2.htm. Therefore, any prior art teaching involving the specific treatment and/or improvement of diabetes does not read on the present claims.

In the Office Action, Claims 1-3 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,706,305 to Wolt et al. ("*Wolt*"). Amended independent Claim 1 recites, in part, a composition comprising an acetogenic fiber, wherein the acetogenic fibre is lactulose, carrot pectin, soybean fibre, soy fibre or a mixture thereof. Applicants respectfully submit that *Wolt* fails to disclose or suggest every element of the rejected claims.

Wolt fails to disclose or suggest a composition comprising an acetogenic fiber, wherein the acetogenic fibre is lactulose, carrot pectin, soybean fibre, soy fibre or a mixture thereof as required, in part, by Claims 1-3. Instead, *Wolt* teaches the use of refined gums, apple pectin and

citrus pectin. See, *Wolt*, column 3, lines 36-56. The Office Action admits same at page 8, lines 17-20. Therefore, since *Wolt* fails to disclose or suggest the specific acetogenic fibers recited in independent Claim 1, *Wolt* is deficient with regard to Claims 1-3.

Accordingly, Applicants respectfully request that the rejections of Claims 1-6 under 35 U.S.C. §102 be withdrawn.

In the Office Action, Claim 3 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Eliaz*. Applicants respectfully submit that the patentability of Claim 1 established above renders moot this obviousness rejection.

Accordingly, Applicants respectfully request that the obviousness rejection of Claim 3 be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

~~BELL, BOYD & LLOYD LLP~~

BY

Robert M. Barrett

Reg. No. 30,142

Customer No. 29157

Dated: April 24, 2008